

Serial No. 09/843,148
30003760-2 US (1509-174)
Page 13

REMARKS

Applicants thank the Examiner for the thorough consideration given the present application. Claims 1-24 are pending, of which claims 1, 11, 14, and 21 are independent. All of the claims have been reviewed for consistency and/or clarity. The title is amended to conform to the amended claims.

At the outset, Applicants wish to politely point out they did not traverse the Examiner's assertions of Official Notice because the Office Action of March 31, 2004, contained no such assertions. However, in the Amendment filed August 2, 2004, Applicants specifically traversed each and every rejection in the previous Office Action, except the provisional double-patenting rejection, which was obviated by the changes to claim 21.

Applicants acknowledge the indication that claim 11 contains allowable subject matter. To expedite prosecution, claim 11 is rewritten in independent form to include the features of claim 1. Accordingly, claim 11 is allowable.

Amended claims 1 and 14 obviate the rejections of (a) claims 1, 2, 8-10, 12-14, and 17-19 under 35 U.S.C. §102(b) as being anticipated by McGill III et al. (U.S. 5,469,573), and (b) claims 3-7, 15, 16, and 20 under 35 U.S.C. §103(a) as being unpatentable over McGill III; and (3) claim 23 as being unpatentable over McGill III in view of Rive (U.S. 6,281,894). Amended claim 21, upon which claims 22 and 23 depend, obviates the rejections of (a) claims 21

Serial No. 09/843,148
30003760-2 US (1509-174)
Page 14

and 22 under 35 U.S.C. §102(e) as being anticipated by Rive and (b) claim 23 under 35 U.S.C. §103(a) as being unpatentable over Rive.

Independent claim 1 is amended to recite a method of restoring an operational state of a computer entity having a combination of elements and steps, including a known good, pristine copy of a primary operating system and patch data representing a portion of code to replace a portion of the primary operating system stored on a data storage device, wherein, under control of a secondary operating system, the primary operating system is rebuilt from a copy of the primary operating system, and patch data is applied to the rebuilt primary operating system.

Independent claim 14 is amended to recite a computer entity having a combination of elements, including a known good, pristine copy of the primary operating system, patch data representing a portion of code for replacing a portion of the primary operating system, and an instruction set for applying the patch data to the primary operating system after it is rebuilt by the secondary operating system.

Independent claim 21 is amended to recite a method of running a computer entity having a combination of steps, including storing as a back up copy a known good pristine copy of the primary operating system on a third partition area, and storing patch data representing a portion of code which replaces a portion of the primary operating system on the third partition area.

Serial No. 09/843,148
30003760-2 US (1509-174)
Page 15

The language "known good, pristine copy of the primary operating system" was originally presented in claim 21 and is now used in claims 1 and 14, as well, because it more clearly describes the back-up copy of the primary operating system. Support for the limitation relating to storing patch data representing a portion of code which replaces a portion of the primary operating system can be found in the original specification, e.g., at page 14, lines 10-29.

None of the references of record, including McGill III and Rive, discloses or suggests an apparatus or method having the above-noted combinations of features, including storing patch data representing a portion of code that replaces a portion of the primary operating system. Therefore, amended independent claims 1, 14, and 21 are not anticipated or disclosed by the cited art, including McGill III and Rive.

Storing "hotfix" patch data means that the primary operating system will be at the same revision/patch level following rebuilding. If such patch data were not stored/applied, the operating system would be in a potentially faulty, outmoded state after being rebuilt. As discussed in the present specification on page 14, lines 10-14, hotfix software patches are typically introduced via a network connection or floppy disk. Therefore, if the system did not automatically store and apply the patch data, a user would have to re-obtain the patches from their original sources and then apply them individually following a rebuild,

Serial No. 09/843,148
30003760-2 US (1509-174)
Page 16

assuming this were possible. Because the risk of human error exists, this step might be omitted. As a result, the claimed feature is not only convenient for users, it also improves the reliability of a computer entity having a rebuilt operating system.

Applicants' previously advanced arguments in support of the patentability of the present invention over McGill are dismissed for the reasons set forth on pages 7-9 of the Office Action. However, it is disingenuous to state that McGill contemplates factory installation, because McGill's disclosure is directed to the operation of a computer after manufacture.


To provide Applicants with the protection to which they are deemed entitled, claim 24 is added. Claim 24, which depends on claim 1, is directed to version checking the rebuilt primary operating system before applying the patch data. Support for added claim 24 can be found in the original specification, e.g., at page 14, lines 16 and 17.

In view of the foregoing amendments and remarks, it is respectfully submitted that independent claims 1, 14, and 21 are allowable with claim 11. Claims 2-10, 12, 13, 15-20, and 22-24, which depend directly or indirectly from independent claims 1, 14, or 21, are also allowable due to their dependence on an allowable independent claims, as well as for the additional limitations provided by these claims. Favorable reconsideration and allowance are deemed in order.

Serial No. 09/843,148
30003760-2 US (1509-174)
Page 17

To any extent necessary, Applicants hereby request any required extension of time not otherwise requested and hereby authorizes the Commissioner to charge any required fees not otherwise paid, including application processing, extension of time, and extra claims fees, to Deposit Account No. 08-2025.

Respectfully submitted,
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